

# BOARD OF SELECTMEN – TOWN OF NATICK

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## **OPEN SESSION MEETING MINUTES**

EDWARD H. DLOTT MEETING ROOM – NATICK TOWN HALL

December 7, 2015

5:45 PM

**PRESENT:** Chairman Charles S. Hughes, Vice Chair J. Richard P. Jennett, Jr., Clerk Nicholas S. Mabardy, Member Josh Ostroff, and Member John J. Connolly

**ALSO PRESENT:** Town Administrator Martha L. White and Executive Assistant Trish O'Neil

Chairman Richard Jennett called the meeting to order at 5:45 p.m.

Mr. Hughes, seconded by Mr. Jennett, moved to enter into Executive Session to discuss matters pertaining to Real Property, Litigation, Non-Union Personnel Negotiations, Municipal Aggregation, and Collective Bargaining, with the Chair announcing that discussion of Executive Session matters in Open Session would have a detrimental effect on the Board of Selectmen's negotiating position and the Town's interests. By a roll call vote, Mr. Jennett, Mr. Mabardy, Mr. Freedman, Ms. Salamoff, and Mr. Connolly all voted in favor of the motion. The Board entered into Executive Session at 5:50 p.m. after announcing that the meeting would return to Open Session at approximately 7:00 p.m.

Open Session reconvened at 7:15 p.m. The Pledge of Allegiance was recited and a moment of silence was observed in honor of those protecting our country.

## **ANNOUNCEMENTS:**

Mr. Ostroff presented a proclamation in honor of Natick resident Guy Troccollo on the occasion of his 100<sup>th</sup> birthday, which his son accepted for his father.

The Town Clerk, Diane Packer, announced that nomination papers for the upcoming election on March 29<sup>th</sup> are available in the Town Clerk's office with openings on both the Board of Selectmen and the Planning Board and 69 Town Meeting vacancies.

## **CITIZEN'S CONCERNS**

None.

## **WHAT'S NEW**

Stephen Roche spoke on behalf of the Natick Elderly and Disabled Taxation Committee, a five-member committee created to collect donations to their fund to help residents who are delinquent on their tax bills due to illness or a change in their situation. One hundred percent of donations received are applied to those tax bills by the Collector-Treasurer. Once enough funds are collected, the committee reviews the applications received and all applicant information is kept completely private. On average, the committee collects about \$10,000 per year and assists eight to 10 families. Mr. Roche encouraged people watching at home to donate to the fund by January 31<sup>st</sup>. Mr. Connolly thanked Mr. Roche and his committee for helping these citizens.

## **APPOINTMENTS WITH THE BOARD OF SELECTMEN**

1. **Sustainability Coordinator – Update on Electricity Aggregation and Eversource Rates:** Ms. Wilson-Martin explained that expected electricity charges were much higher than anticipated and the Town has negotiated with ConEdison to offer a rate of 11.32 cents, down from 13.32 cents, and compared to the current Eversource rate of 10.804 cents, per kilowatt hour, to the first 500 residents who apply with a \$100 early cancellation fee imposed for cancelling a contract prior to December of 2016. The second option citizens have is to opt out of the aggregation program altogether and retain another electricity supplier. Ms. Wilson-Martin referred residents to [chooseenergy.com](http://chooseenergy.com) to see a list of competitive suppliers, Eversource among them, and their prices. Anyone wishing to opt out should contact ConEdison. All information pertaining to this issue can also be found on the Town website.

Mr. Connolly apologized to the citizens and advised all residents to opt out of the program. Mr. Connolly then made a motion, seconded by Mr. Mabardy, to cancel the contract with ConEdison. Mr. Ostroff made a motion to table this issue until the December 21<sup>st</sup> meeting in order to have time to get advice from Town Counsel regarding breaking the contract. Mr. Connolly agreed with this idea and Mr. Hughes seconded the motion. The motion to table the item was unanimously approved by the Board.

2. **Town Clerk – Change in Polling Location:** Ms. Packer presented to request a change in a polling location. The Town currently has four school locations and there are concerns based on safety protocols. The Memorial School poses the biggest concern because voting is done in the lobby with teachers, parents, and students walking through the polling location and voters having access to many parts of the school. Ms. Packer thought the best option for a new location would be the Community-Senior Center, which is brand new and handicapped accessible. For nonpresidential elections, the gym would be used and for presidential elections, the gym and the great room would be used. Mr. Ostroff, seconded by Mr. Hughes, moved to change the polling location to the Community-Senior Center and the motion was unanimously approved. Ms. Packer stated that by law, the Clerk's Office would be sending a notice to every registered voter in Precinct 10 notifying them of the change.
3. **Deputy Town Administrator/Operations – Approve Modifications to Environmental Monitoring Contract:** Per Mr. Chenard, in 2014 the Town contracted with Fay, Spofford and Thorndike, Inc. for environmental monitoring. This company has been absorbed by Stantec Consulting Services, Inc. Town Counsel has recommended amending the contract to reflect the change. Moved by Mr. Connolly and seconded by Mr. Jennett, the Board voted unanimously to amend the contract to read Stantec Consulting Services, Inc. Mr. Chenard stated that additional testing for landfill monitoring is required by the Department of Environmental Protection at a cost of approximately \$5730 and so that amendment must also be made to the contract. On a motion by Mr. Jennett, seconded by Mr. Ostroff, the Board voted unanimously to amend the contract to reflect the additional cost.
4. **Deputy Town Administrator/Operations – Presentation of Capital Plan:** Mr. Chenard explained that the Town Charter and By-laws require publication of a capital plan 30 days prior to presentation of the budget. This will be on the Town website tomorrow and there will be a paper copy in the Selectmen's Office. Updates are made to the capital plan in December. The five-year capital plan including \$97.5 million in projects and equipment, excluding the Kennedy School. Mr. Ostroff stated that his overview of the capital plan is required by law and all of it will be presented at Spring Annual Town Meeting, with any emergency situation that may arise being added at that time.
5. **Police Chief – Consideration of Street Lights on Newfield Drive:** Chief Hicks stated that consideration of this item came from the Safety Committee, which took no action on the topic, indicating that there was not enough of a safety concern to bring the matter forward. Mr. Chenard stated that the estimated cost of \$680,000 would actually be much higher because NStar transformers were not included in the original estimate. Mr. Chenard stated that 45 lights would be required. Mr. Hughes questioned whether the proposal was to undertake the project with a betterment plan and asked for an explanation of the betterment process. Mr. Chenard stated that the Town would handle the engineering and provide a cost estimate to those who would benefit, i.e., the condo owners. The Town would borrow the money to complete the project and the condo owners would pay the betterment fees with their annual tax bills, with the interest rate established by the Town. Mr. Ostroff stated that more discussion is required, and Mr. Mabardy suggested that owners bring the topic up at a condo association meeting to see what kind of support they would have. No vote was taken on this item.
6. **Police Chief – Appointment of Special Officer:** Chief Hicks requested that Sgt Robert Dunlop, who is retiring, be appointed as Special Officer for the Town. Moved by Mr. Mabardy and seconded by Mr. Connolly, the Board voted 4-0-1 to appoint Sgt. Dunlop Special Officer, with Mr. Hughes abstaining because Officer Dunlop's wife works for him as a transcriptionist.
7. **Hearing – Torchona Group, LLC d/b/a Maxwell's 148 – Alleged Alcohol License Violation:** Seconded by Mr. Ostroff, Mr. Hughes moved to open the public hearing. The motion was carried unanimously. Present were Eric Zedicker, the manager of Maxwell's, Attorney John Burke representing Maxwell's, Attorney David DeLuca, Town Counsel, and Lt. Brian Lauzon of the Natick Police Department. Lt. Lauzon reported that on October 21, 2015, Sgt. Robert Hoffman performed

a site visit at Maxwell's. Ms. Borey, the bartender, and Ms. Dandeneau, a server, could not produce proof of TIPS training. Attorney Burke stated that both were in fact trained at the time of the inspection, but simply could not produce evidence of such. A file containing proof of TIPS certification is to be maintained at any bar, and was at Maxwell's – it just could not be located by the servers. The next day, proof of certification was brought to the Police Department and somehow Sgt. Hoffman did not receive it for an additional two weeks. Attorney Burke maintained that the establishment was and is in full compliance. Attorney DeLuca stated that TIPS training files should always be readily available for inspections. It was pointed out that a similar violation had occurred under the previous ownership and after researching the matter with Attorney DeLuca, Mr. Jennett reported that any old violation is owned by the new owner. According to Attorney DeLuca, a violation stays with the property so it is incumbent upon any buyer or transferee to understand that they take on the burden of any previous violation. Mr. Hughes relayed how seriously the Town of Natick takes its alcohol licensing and even though the current alleged violation is not related to the improper service of alcohol, it is still very important. Absent any comments from the public, Mr. Ostroff, seconded by Mr. Jennett, moved to close the public hearing. The motion was carried unanimously. Mr. Ostroff moved to make no finding of a violation, seconded by Mr. Jennett, and the motion was carried unanimously.

8. **Hearing – Cheesecake Factory – Second Alleged Alcohol Violation:** Mr. Mabardy, seconded by Mr. Hughes, moved to open the public hearing. The motion was carried unanimously. Present were Corey Dugan, Manager of the Cheesecake Factory, Attorney Andrew Upton representing the Cheesecake Factory, Attorney David DeLuca, Town Counsel, and Lt. Brian Lauzon of the Natick Police Department. Lt. Lauzon reported that during an inspection, he was informed that Marc Murphy, the manager of record, had left the company several months earlier. Corey Dugan indicated that he was the new manager. Attorney Upton apologized for letting the Town down in terms of administrative compliance and indicated that he had been in touch with the restaurant's headquarters and was informed that they are revamping the process in Natick and in Massachusetts in general to make sure the problem never occurs again. Mr. Hughes pointed out that at a previous Selectmen's meeting, Attorney Brangwynne, present to represent the Cheesecake Factory, had told the Board that this was the first violation the restaurant had ever had, but upon researching the matter, the Board found that the same type of violation had occurred two years prior with a nearly identical hearing process. Asked to outline the options available to the Town, Attorney DeLuca stated that those would include a reprimand, a suspension, and a suspension held in abeyance. Attorney Upton stated that a suspension would cost the restaurant approximately \$8-9,000. Mr. Hughes inquired from Lt. Lauzon and Attorney DeLuca how much time had been spent on this matter and was told approximately 12 hours and 6 hours, respectively. Absent any questions or comments from the public, Mr. Ostroff, seconded by Mr. Jennett, moved to close the public hearing. The motion was carried unanimously. Mr. Hughes requested a motion as to whether the restaurant was in violation of its liquor license. Mr. Ostroff, seconded by Mr. Jennett, moved to find that there had been a violation in failing to have a licensed manager of record and the Board supported the motion unanimously. Asked for recommendations, Lt. Lauzon suggested a suspension held in abeyance for a period of time and Mr. Jennett suggested one year of probation and mitigation with a monetary donation to a Natick charity. Asked by Mr. Ostroff if the Town had the latitude to do this, Attorney DeLuca stated that the Board could request a donation as a creative way of sending a message to corporate and simultaneously helping the community. Mr. Hughes stated that closing the establishment really would do nothing to serve the public and noted that no one was hurt or served improperly. Mr. Hughes moved for a three-day suspension, to be served on a weekend, to be held in abeyance for a year, as well as a \$2500 payment to cover the Town's investigative and legal costs and a \$2500 donation to any organization in Natick that deals with the proper service of alcohol. With this motion, if there were to be another violation, a three-day suspension would be imposed over a weekend. If there is no further violation in a year's time, the suspension would go away. Mr. Ostroff seconded the motion. Mr. Connolly, seconded by Mr. Mabardy, moved to amend the motion to hold the suspension in abeyance for two years and to require payment within 60 days. The Board unanimously approved the motion as amended.
9. **Hearing – Oga's Japanese Cuisine (Minoga) – Alleged Alcohol License Violation:** Mr. Mabardy, seconded by Mr. Jennett, moved to open the public hearing and the motion was carried unanimously. Present were Toro Oga, owner of the restaurant, Kumiko Oga, restaurant manager, Attorney Joseph Devlin representing Oga's, and Lt. Lauzon of the Natick Police Department. Lt. Lauzon reported that Mr. Benny Li, listed as the manager, has not been manager since 2011, but during compliance checks, the police were led to believe that he was. Mr. Oga apologized profusely for the mistake, indicating that it would never happen again. Attorney Devlin stated that an employee of Oga's, out

of misguided loyalty to the Ogas, misled the police. Mr. Li was Mr. Oga's business partner and was business savvy while Mr. Oga, though part owner, mainly worked as a chef. Kumiko Oga took over the administrative portion of the business when the partnership ended but relied on her attorney, Dan Wilson, who took the blame upon himself at a recent Selectmen's meeting, saying that he had "dropped the ball." Kumiko Oga then also apologized profusely. With no public comments or questions, the Board voted unanimously to close the public hearing on a motion by Mr. Ostroff that was seconded by Mr. Connolly. Mr. Hughes, seconded by Mr. Ostroff, moved that a violation of the liquor license had occurred in that the manager of record was misrepresented to the police department. The Board carried the motion unanimously. Mr. Connolly, seconded by Mr. Jennett, moved for a one-day license suspension to be held in abeyance for one year that, absent any further violations, would not be imposed. The motion was carried unanimously.

## **DISCUSSION AND DECISION**

10. **Discussion Regarding Establishing Sawin House Advisory Committee:** Mr. Frank Foss, the Town Moderator, was present for this discussion. Town Meeting voted to appoint a committee to explore uses for the Sawin House, a property owned by Mass Audubon. Mr. Ostroff, seconded by Mr. Jennett, moved to establish a Sawin House Advisory Committee and the motion was carried unanimously. Mr. Hughes directed that an advertisement be placed to solicit volunteers.
11. **BOS Meeting Schedule – January-June 2016:** Mr. Hughes moved to approve Selectmen Meeting dates of January 4 and January 18. The motion was seconded by Mr. Jennett and the Board voted unanimously in favor of the motion. Mr. Hughes moved to approve the rest of the proposed meeting dates if such dates alternated with School Committee meeting dates. Mr. Jennett seconded the motion, which was carried unanimously by the Board.
12. **Discussion Regarding Fire Station 4 Design Committee:** Chief White stated that parts of the building are unsafe according to the contractor. The apparatus floor is actually separating from the building, the roof and shingles are damaged, there is a rodent problem, and there is no insulation in the building. Ms. White stated that it is becoming an urgent issue that needs to be looked at. Mr. Hughes moved, seconded by Mr. Mabardy, to have the Town Administrator put together a charge for a design and building committee. The motion was unanimously approved.
13. **Town Administrator Evaluation:** Mr. Hughes instructed the Board members to make an appointment with Ms. White if they wished to discuss her evaluation with her. Ms. White felt that an evaluation could not be submitted by a Board Member without a meeting with her. Mr. Connolly pointed out that the policy stated "may," not must, meet with the Town Administrator to discuss her evaluation. Mr. Hughes made a motion, seconded by Mr. Jennett, to approve the proposed evaluation form and the Board voted unanimously in favor of the form.
14. **2016 Boston Marathon Update:** Ms. White stated that each runner is expected to raise \$4000 for charity and that all permits have been given out.
15. **Renewal of Licenses for 2016:** On a motion by Mr. Ostroff, seconded by Mr. Jennett, the Board unanimously voted to approve renewal of all 2016 licenses contingent upon submission of all required renewal materials, payment of the licensing fee, and payment of any delinquent taxes and/or fees.

## **REQUESTED ACTION**

**Meeting Minutes 12/1/15:** On a motion by Mr. Jennett, seconded by Mr. Ostroff, the Board voted unanimously to approve the Selectmen Meeting minutes from December 1, 2015.

## **TOWN ADMINISTRATOR NOTES**

None.

## **SELECTMEN'S CONCERNS**

Mr. Connolly stated that the ornamental lighting on the Common has been fixed but expressed frustration that it had taken so long to accomplish. Mr. Connolly discussed a letter from the Assessor's Office stating that they would be visiting homes. Mr. Hughes explained that every two or three years every house in the

Town is supposed to be reevaluated. Mr. Ostroff pointed out that an in-home inspection would be voluntary on the part of the homeowner. Mr. Connolly had questions about the Pond Street retaining wall, wanting to know what was done and who was paid. Ms. White promised to get that information to him. Mr. Connolly made a public request to have the emails that went around prior to Thanksgiving be made public. Ms. White said she would get the emails to him.

Mr. Ostroff commended all those involved in the Pegan Hill matter. He announced that Geoff Lewis, the new senior planner, is on board.

Mr. Mabardy asked if interviews were being conducted for the position of assistant comptroller. Ms. White indicated that interviews are not going on but that the Town is looking to replace Shawn McGoldrick, the former assistant comptroller. Mr. Mabardy asked how the money that is being borrowed to fund Pegan Lane will affect the taxpayers. Ms. White stated that there is no impact on the taxpayers in that it will be funded through the operating budget. Mr. Mabardy asked if the Board would see a preliminary budget prior to Town Meeting and Ms. White responded affirmatively with a date of January 4<sup>th</sup>, 2016.

Mr. Hughes mentioned a complimentary letter received by the Board from a resident regarding the Department of Public Works related to a concern that went through the See-Click-Fix Program.

### **CORRESPONDENCE**

No correspondence was discussed.

### **ADJOURNMENT**

On a motion by Mr. Ostroff seconded by Mr. Jennett, the Board unanimously voted to adjourn the Board of Selectmen's Meeting at 11:00 p.m.



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Nicholas S. Mabardy, Clerk

December 7, 2015 Board of Selectmen Meeting Minutes Approved by the Board of Selectmen on June 13, 2016

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All documents used at this Board of Selectmen meeting are available at:

<http://naticktown.novusagenda.com/agendapublic/MeetingView.aspx?MeetingID=204&MinutesMeetingID=-1&doctype=Agenda>